UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WALDEN SECURITY, INC.	*		
Respondent,	*		
and	*	**Cases**	**14-CA-170110**
			18-CA-170129
UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA, INTERNATIONAL UNION JOINTLY WITH ITS MEMBER LOCALS 85, 86, 109, 110, 152, 161, 167, 173, 175, 220,	*		**16-CA-170337**
			15-CA-176496
Charging Party.	*		

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RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Respondent Walden Security ("Respondent" or "Walden"), by and through its undersigned counsel, and pursuant Section 102.46 of the National Labor Relations Board's Rules and Regulations, hereby excepts to the Decision issued by Administrative Law Judge ("ALJ") Melissa M. Olivero on July 7, 2017 in the above-captioned matter (the "Decision"). The grounds and authorities supporting Respondent's Exceptions are set forth in the Respondent's Brief in Support of Exceptions to Administrative Law Judge's Decision, filed herewith. Respondent takes exception to the Decision as follows:

EXCEPTIONS

I. Misapplication of Applicable Legal Standards Regarding Successorship

1. Failure to find that Respondent was not a "perfectly clear" successor under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972) ("*Burns"*) and *Spruce Up Corp.*, 209 NLRB 194 (1974) ("*Spruce Up*"). (Decision, pp. 10-12).

2. Misapplication of the standards set forth *Burns*, under which a successor employer is not burdened with its predecessor's terms and conditions of employment unless deemed a "perfectly clear" successor, to the uncontroverted facts of the case. (Decision at10-14).

3. Misapplication of the standards set forth in *Burns*, under which a successor employer is not obligated to maintain the employment terms in effect under its predecessor; rather, a successor is ordinarily free to set initial terms on which it will hire the employees of a predecessor. (Decision at10-14).

4. Failure to apply the appropriate legal standard under which the General Counsel carries a heavy burden to prove that a successor employer has forfeited its *Burns* right to set new initial terms and conditions of employment. (Decision at10-14).

5. Failure to consider the policy considerations that support conferring successor employers with the freedom to set initial terms and conditions of employment. (Decision at 10-14).

6. Failure to recognize the principle established in *Burns* and *Spruce Up* that encumbering a successor employer with the terms of its predecessor's collective bargaining agreement should be an extremely rare exception to the general rule. (Decision at 10-14).

7. Effectively creating and applying a standard not supported by applicable case law for determining if a successor employer is a "perfectly clear" successor. (Decision, pp. 12-14).

8. Failure to find that unless unusual circumstances exist, a successor employer is free to set the initial terms and conditions of employment under which it hires its workforce. (Decision, pp. 10-14).

9. Misapplication of the standard set forth in *Spruce Up*, under which the "perfectly clear" successor exception is strictly limited to circumstances in which the new employer has

either actively or by tacit inference misled employees into believing they would all be retained without changing their wages, hours, or conditions of employment, or at least to circumstances where the new employer has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment, to the uncontroverted facts of the case. (Decision, pp. 10-14).

10. Failure to find, consistent with *Spruce Up* and its progeny, that Respondent avoided perfectly clear successor status by sufficiently communicating its intent to change the terms and conditions of employment both simultaneously with and prior to expressing an intent to retain the predecessor's employees. (Decision, pp. 10-14).

11. Finding that "[i]n cases subsequent to *Spruce Up*, the Board clarified that the perfectly clear exception is not limited to situations where the successor fails to announce initial employment terms before it formally invites the predecessor's employees to accept employment." (Decision at 11).

12. Implicit finding that Respondent's actions were contrary to the public policy of the NLRA intended to protect employees from being misled into accepting employment or being lulled into a false sense of security about the terms and conditions of employment prior to accepting employment. (Decision at 10-14).

13. Implicit finding that Respondent induced possibly adverse reliance upon the part of employees lulled into not looking for other work. (Decision at 10-14).

14. Failure to find that in order to retain the right to set new initial employment terms under *Burns*, a successor employer need only portend that continued employment with the successor employer will be on changed terms and conditions. (Decision at 10-14).

15. Misapplication of the standards set forth in *Spruce Up*, under which the General Counsel carries the burden of proving that an employer failed to "portend" new initial employment terms before inviting predecessor employees to accept employment. (Decision at 10-14).

16. Misapplication of Board law in distinguishing the instant case from *Paragon Systems*, Inc., 364 NLRB No. 75 (2016). (Decision at 13-14).

17. Improper comparison of the instant facts to the facts in *Creative Vision Resources, LLC*, 364 NLRB No. 91 (2016), *Nexeo Solutions, LLC*, 364 NLRB No. 44 (2016), and *Adams & Associates, Inc.*, 363 NLRB No. 193 (2016) to conclude that Respondent was a "perfectly clear" successor. (Decision at 12-13).

II. Respondent Is Not a "Perfectly Clear" Successor to Akal

18. Misreading of the transition letter and town hall meeting notices. (Decision at 11-14).

19. Finding that Respondent is a "perfectly clear" successor to Akal. (Decision at 11-14).

20. Failure to find that Respondent's hiring was in a state of flux through the point of extending actual invitations to accept employment (on or about October 23, 2015) and that at no time prior to that moment did Respondent mislead Akal employees into believing that they would be retained on the same terms and conditions. (Decision at 11-14).

21. Failure to find that Respondent had provided clear notice to Akal employees that their continued employment would be on changed terms and conditions prior to extending offers of employment to them. (Decision at 11-14).

22. Failure to find that the Union had at least a "portent" if not actual notice that Respondent intended to set new initial employment terms upon taking over that contract before Respondent was awarded the CSO contracts for the 5th and 8th Circuits. (Decision at 11-14).

23. Failure to find that the transition process undertaken by Respondent in the 5th and 8th Circuits was substantially similar to the transition process Respondent previously implemented in the 6th Circuit, where in both instances it announced and shortly thereafter held town hall meetings for the predecessor employees; advised that Respondent would not be assuming nor applying the terms of any CBAs that the Union may have had with the predecessor contractor; provided information about Respondent's policies and benefits; and gave employees the opportunity to apply for positions with Respondent. (Decision at 10-14).

24. Failure to find that Respondent clearly communicated its intent to establish new terms and conditions of employment in the transition letter and town hall meeting notices, by expressly pointing out that benefits and policies would be subsequently discussed, including at the town hall meetings. (Decision at 11-12, 14).

25. Failure to take into consideration the entirety of the transition letter and town hall meeting notices in concluding that Respondent made no reference to its intent to change the terms and conditions of employment. (Decision at 11-12, 14).

26. Finding that "no reference was made by Respondent to making specific changes to Akal's terms and conditions of employment" in the town hall meeting notices. (Decision at 12).

27. Implicit finding that in order not to be deemed a "perfectly clear" successor, the successor employer must announce "specific" changes to the terms and conditions of employment. (Decision at 12-14).

28. Finding that the transition letter and town hall meeting notices invited all or a majority of Akal employees to accept continued employment without a change in terms and conditions of employment. (Decision at 11-14).

29. Failure to recognize, pursuant to Board precedent, that it is sufficient that the new employer simply announce its intention to set new terms and conditions of employment. (Decision at 11-14).

30. Failure to find that an employer's communication of its intent to change terms and conditions of employment generally, is sufficient to avoid "perfectly clear" successor status. (Decision at 11-14).

31. Failure to find that Respondent was not required by any law or regulation to inform Akal's employees of the specific changes it intended to make to avoid the "perfectly clear" exception. (Decision at 12-14).

32. Failure to find that the pre-employment communications between Respondent and Akal's employees informed the employees of specific changes to their terms and conditions of employment prior to or contemporaneously with, Respondent's invitation to certain of them to accept employment. (Decision at 11-14).

33. Finding that Respondent demonstrated a desire to hire Akal's employees without a change in their terms and conditions of employment first in its transition letter and later in its town hall meeting notices. (Decision at13).

34. Finding that Respondent did not mention any specific changes to employee terms and conditions of employment in its transition letter and town hall meeting notices and that it therefore became obligated to bargain with the Union before setting initial terms and conditions of employment. (Decision at13).

35. Conclusion that Respondent became obligated to bargain with the Union before setting initial terms and conditions of employment, based solely on the finding that it did not

mention any specific changes to employee terms and conditions of employment in the transition letter and town hall meeting notices. (Decision at13).

36. Finding that the language of the town hall meeting notices, inviting employees to "Join Our Team" and learn more about the company, "does not make clear that employees would be competing for jobs or might not be hired." (Decision at14).

37. Finding that the transition letters references to "our new security officers," and stating that "you have joined the premier security services provider in the industry" asking for patience during the transition process, and announcing a desire for seamless and constant management during the transition, indicated an intent to retain Akal employees without changing terms and conditions of employment. (Decision at 14).

38. Rejection of Respondent's argument that because UGSOA International Union Director Jeff Miller assumed Respondent would seek to remove SSO and LSSO classifications from the bargaining unit descriptions, the Union was aware that Respondent intended to alter the terms and conditions of employment for Akal's employees based on the finding that Respondent never announced an intent to alter the terms and conditions of employment for Akal's employees to either the unit employees or the Union. (Decision at 14).

39. Finding that Miller's "assumptions do not equate to an announcement that Respondent sought to somehow change the description of the bargaining units at issue." (Decision at 14).

40. Rejection of Respondent's argument that, because the Union assumed Respondent would seek to remove SSO and LSSO classifications from the bargaining unit descriptions at issue, Respondent could avoid "perfectly clear" successor status. (Decision at 14).

41. Failure to find that the Union and its members had knowledge of Respondent's employment practices regarding taking over Court Security Officer contracts prior to Respondent's distribution of the transition letter. (Decision at 11-14).

42. Failure to infer awareness on the part of the Union as to Respondent's intent to alter the terms and conditions of employment for Akal's employees from the Union's assumption that Respondent intended to remove the SSO and LSSO classifications from the unit descriptions, and that such awareness negated the need for any further communication by Respondent. (Decision at 14).

43. Failure to find that awareness is sufficient to put a Union on notice of the employer's intent to change the terms and conditions of employment such that it is not a "perfectly clear" successor. (Decision at 10-14).

44. Failure to infer knowledge on the part of the Union and its members that Respondent intended, or might intend, to make changes to initial terms and conditions of employment in the 5th and 8th Circuits from those in effect under its predecessor, based on its knowledge that Respondent had much such changes in the 6th Circuit several months earlier. (Decision at 10-14).

45. Failure to properly apply Board precedent holding that the union's knowledge of an employer's intentions may be imputed to its members. (Decision at 10-14).

46. Failure to ensure that the evidentiary record contained all relevant information and evidence concerning prior interactions between the UGSOA International Union and Respondent as well as other communications between Respondent and Akal employees subsequent to the transition letter. (Decision at 2-14).

47. Failure to find that the Union and its members had at least a portent if not actual notice that Respondent would reject the employment terms that had been in effect under Akal based on its knowledge of Respondent's prior rejection of the employment terms that had been in effect under the predecessor employer in the 6th Circuit and had set new initial employment terms unilaterally. (Decision at 10-14).

48. Conclusory assumption that all or a majority of the predecessor employees were led to believe that they were being retained by Respondent. (Decision at 14).

49. Misapplication and drawing of negative inferences relating to the fact that Respondent retained a majority of Akal's employees. (Decision at 14).

50. Relying solely on a pair of communications from Respondent to employees – a transition letter and a town hall meeting notice in finding that Respondent was a "perfectly clear" successor. (Decision at 10-14).

51. Failure to find that contents of those communications, when considered with the knowledge of what had occurred in the 6th Circuit and the ensuing town hall meetings, do not provide any support for application of the "perfectly clear" successor exception. (Decision at 10-14).

III. <u>Transition Letter</u>

52. Finding that the transition letter "failed to clearly announce [Respondent's] intent to establish a new set of conditions prior to inviting former employees to accept employment." (Decision at 11).

53. Failure to find that the transition letter does not indicate an intent to hire all Akal employees on the same employment terms as those that were in effect under Akal. (Decision at 11-14).

54. Implicit finding that the statements "welcome" and "you have joined the premier security services provider in the industry" in the transition letter indicated that all Akal employees would be hired. (Decision at 11).

55. Finding that Respondent's transition letter "overwhelmingly indicated that Respondent would be retaining Akal's work force." (Decision at 12).

56. Failure to find that the town hall meeting notices dispelled any perceived intent by Respondent in the transition letter to retain Akal's employees without a change in their terms and conditions of employment. (Decision at 12-13).

57. Finding that the transition letter constituted an invitation or offer by Respondent to all Akal employees to accept employment and that it did not simultaneously inform the reader that terms and conditions of employment would be different under Respondent. (Decision at 13).

58. Failure to find that the transition letter was an announcement informing Akal's workforce that Respondent had been awarded the contract to provide security services and that more information about Respondent and its employment policies and benefits would be provided. (Decision at 11-14s).

59. Failure to find that the statement in the transition letter indicating that Respondent "will be providing you much more information about Walden Security in the weeks ahead, to include orientation materials, benefit package details, contact information, policies, etc.," was a clear communication of Respondent's intent to change the terms and conditions of employment. (Decision at13-14).

60. Failure to infer that the above statement in the transition letter indicated Respondent's intent to implement changed policies and benefits and failure to find that this statement provided

a sufficient portent of new employment terms to the predecessor's employees. (Decision at 13-14).

61. Failure to find that the only plausible inference the Union and its members could draw upon receipt of the transition letter was that Walden was going to be implementing its own policies and benefits in the 5th and 8th Circuits just as it had done in the 6th Circuit. (Decision at 11-14).

62. Failure to find that any uncertainty by Akal employees about Respondent's plans after reading the transition letter meant that it was not "perfectly clear" that Respondent intended to retain all Akal employees on the same terms and conditions that they enjoyed under Akal. (Decision at 11-14).

63. Failure to find that the uncertainty of any Akal employees as to Respondent's plans based on the language of the transition letter left open the possibility of new terms and conditions of employment and provided a portent of changed initial employment terms. (Decision at 11-14).

64. Finding that the transition letter "demonstrated a clear desire to retain all or a majority of Akal's employees by referring to them as 'our new security officers,' and stating 'you have joined the premier security services provider in the industry,' asking for patience during the administrative process, and announcing a desire for seamless and constant management during the transition." (Decision at 14).

65. Finding that Respondent became a "perfectly clear" successor to Akal when it distributed the transition letter to Akal's employees. (Decision at 14).

66. Finding that Respondent made no announcement of its intent to alter the terms and conditions before offering employment to Akal's employees and as a result, "cloaked itself with

perfectly clear successor status at the time it sent the transition letters to unit employees." (Decision at 14).

67. Finding that all of Respondent's changes to the terms and conditions of employment for unit employees were implemented by Respondent after October 8, 2015, after it had already distributed the transition letter and become a "perfectly clear" successor. (Decision at 15).

68. Finding that October 8, 2015 was the "latest date on which Respondent distributed transition letters and became a perfectly clear successor." (Decision at 15-16).

69. Failure to find that the town hall notice may have been distributed with or prior to the transition letter for all but one of the seven bargaining units that remain in this case. (Decision at 11-16).

70. Failure to recognize that the transition letter and town hall meeting notices must be read together because, except for one of the seven bargaining units remaining in this case, there is no record evidence establishing the sequence in which the transition letter and the town hall meeting notices were distributed to or received by Akal's employees. (Decision at 11-16).

IV. <u>Town Hall Meeting Notices</u>

71. Failure to find that Respondent clearly communicated its intent to change employee benefits in the town hall meeting notices, which may have been disseminated simultaneously with or prior to the transition letter. (Decision at 11-14).

72. Implicit finding that the statement "Join Our Team" in the town hall meeting notices was intended to mean that all Akal employees would be offered employment and automatically accepted as employees of Respondent. (Decision at 12).

73. Finding that Respondent's town hall meeting notices "manifested its intent to retain Akal's employees." (Decision at 12).

74. Misconstruing the town hall meeting notice as an offer or invitation to all Akal employees to accept employment with Respondent, rather than an announcement informing Akal's workforce that information about Respondent's benefits (and other issues) would be provided at the town hall meetings. (Decision at 11-14).

75. Finding that Respondent did "nothing" in the town hall meeting notices to "dissipate" the notion that the predecessor employees were being retained without a change to their terms and conditions of employment. (Decision at 14).

76. Failure to find that the town hall notices confirmed that Respondent would be setting new initial terms and conditions with respect to benefits. (Decision at 11-14).

77. Failure to find that the town hall notices established that the transition letter did not guarantee retention of Akal's entire workforce because the notice informed Akal employees that they would need to complete an employment application in order to be considered by Respondent, and provided a list of documentation that each applicant would need to present in order to apply. (Decision at 11-14).

78. Failure to find that by the time of the town hall meetings, Akal employees were aware that Respondent would be presenting information about its own benefits and policies at the meeting, and that he/she would need to bring specific credentials and documents and complete an employment application at the meeting if he/she wanted to be employed by Respondent. (Decision at 11-14).

79. Failure to find that as of September 19, 2015, the Union and its members were on notice that Akal employees would not be hired on the same terms and conditions of employment that had been in effect under Akal. (Decision at 11-14).

80. Failure to find, with employees having to submit employment applications at the town hall meetings in order to receive employment offers from Respondent, and with Respondent's representatives informing town hall meeting attendees that Respondent would not be adhering to the terms of Akal's CBAs, and presenting a PowerPoint showing the differing benefit options Respondent would be offering, the Akal employees had no reasonable expectation that employment with Respondent would be under the same terms and conditions of employment as under Akal prior to Respondent extending them any offer of employment. (Decision at 11-14).

81. Failure to find that the October 23, 2015 offer letter sent to those predecessor employees who had applied and been selected for employment by Respondent was the only invitation to accept employment, and therefore Akal employees had been notified prior to receiving any offer of employment that Respondent intended to set new initial employment terms. (Decision at 11-16).

V. Respondent Did Not Violate the Act By Implementing New Terms and Conditions of Employment on December 1, 2015

82. Conclusion that Respondent Violated the Act by implementing new terms and conditions of employment on December 1, 2015. (Decision at 15).

83. Failure to recognize December 1, 2015 as the start date of the selected Akal employees' employment with Respondent. (Decision at 15-16).

84. Conclusion, based solely on Respondent's stipulated admission that it implemented changes to terms and conditions of employment without first notifying the Union or affording it an opportunity to bargain, that Respondent violated Section 8(a)(5) and (1) of the NLRA. (Decision at 16).

85. Failure to find that Respondent was not a "perfectly clear" successor and was therefore free to establish its own terms and conditions of employment without notifying the Charging Party or affording it the opportunity to bargain. (Decision at 16).

86. Drawing of negative inferences relating to Respondent's admission that it implemented changes to the terms and conditions of employment for unit employees without first notifying the Union or affording it an opportunity to bargain. (Decision at 16).

VI. General Exceptions

87. The entirety of the Decision's findings of fact. (Decision at 2-10).

88. The entirety of the Decision's alleged unfair labor practices. (Decision at 2-10, 17-21).

89. The entirety of the Decision's discussion and analysis. (Decision at 10-16).

90. The entirety of the Decision's conclusions of law. (Decision at 17-21).

91. Conclusion that between September 5 and October 8, 2015, and continuing to date, Respondent has failed and refused to recognize United Government Security Officers of America, International Union, jointly with its Member Locals 85, 86, 109, 110, 111, 152, 161, 167, 173, 175, 220 (Union), as the exclusive representative of its employees in the appropriate units described in paragraphs 2 through 12, above, and thereby has violated and is violating Section 8(a)(5) and (1) of the Act. (Decision at 20).

92. Conclusion that on about December 1, 2015, Respondent violated Section 8(a)(5) and (1) of the Act by implementing the following changes to its employees' terms and conditions of employment without first notifying the Union or providing the Union an opportunity to bargain: temporarily suspending the 401(k) program; ceasing to pay the costs of obtaining follow-up medical examinations; ceasing to pay employees for time spent obtaining follow-up medical

examinations; refusing to process grievances; ceasing to pay lead court security officers at the lead court security officer pay rate when they are not performing lead court security officer duties; and ceasing to offer major medical insurance coverage. (Decision at 20).

93. Finding that Respondent has engaged in unfair labor practices. (Decision at 21).

94. Finding that Respondent engaged in unlawful conduct affecting commerce within the meaning of Section 2(6) and (7) of the NLRA. (Decision at 21).

95. The entirety of the Decision's remedy. (Decision at 21).

96. The entirety of the Decision's recommended order. (Decision at 22-25).

Dated: Baltimore, Maryland
October 10, 2017

Respectfully Submitted,

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